

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** June 27, 2005

**To:** The Commission  
(Meeting of June 30, 2005)

**From:** Delaney Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** AB 736 (J. Horton) Public utilities: regulation.  
As Amended May 23, 2005

**Legislative Subcommittee Recommendation:** Support if Amended

**Summary:** This bill would remove the requirement of P.U. Code Section 851 that a utility obtain an order from the CPUC before it can sell, lease, or in some other way encumber an asset that is necessary or useful in the provision of services to its customers. Instead, the utility would be required to file an advice letter and obtain a resolution authorizing the transaction. The bill would also change Section 853 to exempt certain transfers, encumbrances, reorganizations, creations, or dissolutions of affiliates, subsidiaries, or partnerships that control a public utility from CPUC oversight under Article 6, given certain conditions regarding changes in the ownership of the affiliate or subsidiary.

**Division Analysis (Energy/ALJ):** The purpose of P.U. Code Sections 851 and 853 is to ensure that the assets that a utility uses to provide service to its customers are not disposed of or in some other way encumbered without review by the regulator.

However, it can be a difficult and costly process to file a formal application with the CPUC in order to dispose of excess properties. It is often a wasteful process in those instances where the value of the property is low, such as with small tracts of land or leases of property. Some lesser level of review, as through the submission of advice letters, would streamline and rationalize the process.

**Recommended Amendments:**

1. Modify language in PU Code Section 851 to remove dollar demarcation and instead allow the Commission discretion to designate a procedure other than an advice letter for qualified transactions. This would provide the Commission with the flexibility to better match the process to the scope of excess properties under consideration.

2. Move language in the bill currently amending PU Code Section 853 to PU Code Section 854 and change "article" to "section". [can we add a sentence explaining why this is a good idea?]

## **PROGRAM BACKGROUND**

Article 6 of the P.U. Code addresses the Transfer or Encumbrance of Utility Property, and is designed to prevent the use or exploitation of utility assets by the shareholders. In the case of the sale of assets that are still in rate base, and thus are still used and useful for the provision of utility service, this article, specifically Section 851, ensures that shareholders must get approval of the regulator before they can dispose of the asset. The CPUC has given permission for these transactions as long as utility service is not impaired, ratepayers are allocated some or all of the gain on sale if appropriate, and the transaction is in all other ways in the public interest. (The CPUC is currently exploring policies in a Rulemaking to guide it in the allocation of gains from sale in the future.) If the asset is no longer in rate base, for instance a building or machine that is fully depreciated, this section does not apply and shareholders are free to dispose of the asset without review.

This article also discusses the requirements governing mergers of utilities or acquisitions of utilities in this jurisdiction. Such transactions require extensive review by the CPUC under this section. In the case of mergers, the CPUC must make a determination of what savings are engendered by the merger, and must allocate at least half of these savings to the ratepayers.

## **LEGISLATIVE HISTORY**

N/A

## **STATUS**

Passed Assembly on May 26, 2005 76-0. Will be heard in Senate Energy, Utilities & Communications Committee on June 30, 2005.

## **SUPPORT/OPPOSITION (as of April 25, 2005)**

### Support

California Telephone Association's Independent Company Group (Sponsor)  
Global Valley Networks, Inc.  
Kerman Telephone  
Sierra Telephone

Surewest  
TDS Telecom  
Wild Goose Storage, Inc.

Opposition

None on file.

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**Date:** June 27, 2005

**BILL LANGUAGE**

BILL NUMBER: AB 736      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MAY 23, 2005  
AMENDED IN ASSEMBLY    MAY 2, 2005  
AMENDED IN ASSEMBLY    APRIL 12, 2005

INTRODUCED BY    Assembly Member Jerome Horton

FEBRUARY 17, 2005

An act to amend Sections 851 and 853 of the Public Utilities Code, relating to the regulation of public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 736, as amended, Jerome Horton. Public utilities: regulation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. Existing law prohibits, with certain exemptions, any public utility other than a common carrier by railroad, as defined, from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public without first having obtained an authorizing order from the commission. Existing law, with certain exemptions, makes void every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it.

This bill would prohibit, with certain exemptions, any public utility other than a common carrier by railroad, from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public, without first ~~filing~~ *having either secured an order from the commission authorizing it to do so for qualified transactions valued above \$5,000,000, or for qualified transactions valued at \$5,000,000 or less, having filed an advice letter and obtaining a resolution from the commission authorizing it to do so. The bill would require the commission to determine the types of transactions that qualify for advice letter handling and* to approve or deny the advice letter within 120 days of its filing absent a protest or incomplete documentation by the applicant public utility.

Existing law prohibits, with certain exemptions, a public utility and a subsidiary, an affiliate, or a corporation holding a controlling interest in a public utility, from acquiring, taking, or holding any part of the capital stock of any other public utility

without first having obtained an authorizing order from the commission. Existing law prohibits, with certain exemptions, any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, without first having obtained an authorizing order from the commission.

This bill would additionally exempt the creation, acquisition, merger, reorganization, dissolution, sale, or transfer of an affiliate, subsidiary, or partnership directly or indirectly controlling a public utility from the above-described requirements, when certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 851 of the Public Utilities Code is amended to read:

851.

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act ( ~~Title 49, U.S.C.~~

~~49 U.S.C. Sec. 10101 et seq.~~ ) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it to do so.

~~Absent~~ The commission shall determine the types of transactions that qualify for advice letter handling and absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and resolution from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be

conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with that property in good faith for value, provided that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

SEC. 2. Section 853 of the Public Utilities Code is amended to read:

853.

(a) This article does not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal corporations or other public agencies primarily for resale or use in serving the public or any portion thereof, but shall apply to any public utility, and any subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, if the commission finds, in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public interest.

(b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

(c) The provisions of Sections 851 and 854 that prohibit any assignment, acquisition, or change of control without advance authorization from the commission, do not apply to the transfer of the ownership interest in a water utility, with 10,000 or fewer service connections, from a decedent to a member of the decedent's family in the manner provided in Section 240 of the Probate Code or by a will, trust, or other instrument.

(d) This article does not apply to the creation, acquisition, merger, reorganization, dissolution, sale, or transfer of an affiliate, subsidiary, or partnership directly or indirectly controlling a public utility, where both of the following are true:

(1) There is no change in ownership of any of the shares of the capital stock of the public utility.

(2) Following the creation, acquisition, merger, reorganization, dissolution, sale, or transfer, the ultimate beneficial owner of the public utility continues to hold greater than 50 percent of the ownership interest in any subsidiary or affiliated entity that is a direct or indirect owner of the public utility.